

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RALPH R. KAMINSKI,

Plaintiff/Counter-defendant,

v.

BETTY KAMINSKI, et al.,

Defendants/Counter-claimants.

3:11-cv-00493-LRH-RAM

ORDER

Plaintiff Ralph R. Kaminski initiated this action in the Ninth Judicial District Court for Douglas County, Nevada. On May 17, 2011, Plaintiff was served with a counterclaim by Defendants Betty Kaminski and Charles Kaminski. On July 13, 2011, in his stated capacity as “Counterdefendant,” Plaintiff filed a notice of removal to this court based on diversity jurisdiction. Doc. #1.¹

“[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district . . . where such action is pending.” 28 U.S.C. § 1441(a). After a defendant files a petition for removal, the court must determine whether federal jurisdiction exists, even if no objection is made to removal. *See Rains v. Criterion Systems, Inc.*, 80 F.3d 339,

¹Refers to the court’s docket entry number.

1 342 (9th Cir. 1996). “If . . . it appears that the district court lacks subject matter jurisdiction, the
2 case shall be remanded.” 28 U.S.C. § 1447(c). “Federal jurisdiction must be rejected if there is
3 any doubt as to the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
4 (9th Cir. 1992) (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)).

5 Upon review of the petition for removal and accompanying exhibits, the court finds that
6 Plaintiff is not a “defendant” authorized to remove the case to federal court under 28 U.S.C. §
7 1441(a), despite his status as a counterclaim defendant. “Since *Shamrock Oil*, the law has been
8 settled that a counterclaim defendant who is also a plaintiff to the original state action may not
9 remove the case to federal court.” *Westwood Apex v. Contreras*, --- F.3d ----, 2011 WL 1744960,
10 *5 (9th Cir. May 2, 2011) (referencing *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100 (1941)).
11 Because Plaintiff had no right of removal, the court lacks jurisdiction and remand is required.

12 IT IS THEREFORE ORDERED that this case is remanded to the Ninth Judicial District
13 Court for Douglas County, Nevada.

14 IT IS SO ORDERED.

15 DATED this 22nd day of July, 2011.



17 LARRY R. HICKS
18 UNITED STATES DISTRICT JUDGE
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